

Program Directive

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9-2-88

CONFLICTS OF INTEREST OF OFFICIAL AGENCY PERSONNEL¹

I.
PURPOSE

To establish procedures for field office managers (FOMs) and agency managers (AMs) to identify and to report potential and actual conflicts of interest, and to ensure that such conflicts do not compromise the integrity of the official inspection and weighing system.

II.
AUTHORITY

Conflicts of interest of official agency personnel are prohibited by Section 11 of the U.S. Grain Standards Act (USGSA); section 800.187 of the USGSA's regulations; and sections 68.30 and 68.80 of the regulations of the Agricultural Marketing Act of 1946 (AMA).

III.
DEFINITION

A conflict of interest exists when a person has an interest, usually financial, either directly or indirectly, in the business entity of the grain or commodity for which official services are performed or requested.

IV.
POLICY

In any situation involving the providing of official services in which a conflict of interest, or the appearance thereof, may exist, the person providing the service or the official agency shall contact the Field Office (F/O) for a ruling. If the F/O has any doubt, it shall immediately contact the Regulatory Branch, Compliance Division (CP).

After being informed that a conflict of interest exists, the person shall take immediate action to end the conflict.

An exception may be requested if the person with the conflict has reason to believe undue personal hardship may result if he or she is required to eliminate the conflict.

¹Conflicts of interest involving FGIS employees shall be reported to the Animal and Plant Health Inspection Service, Human Resources Division, Employee Conduct and Labor Relations Programs, with a copy to CP and Field Management Division.

Distribution:

A, C

Originating Office:

CP, Regulatory Branch

Such person must submit a written statement to the CP giving facts, circumstances, and the reasons for requesting the exception. If the Administrator determines that the integrity of the official system will not be compromised, an exception may be granted. If not excepted, the employee must terminate the conflict of interest. Failure to do so will result in dismissal of an application for a license, revocation of a license, or termination of employment by the official agency.

Exceptions allow persons with conflicts of interest to perform official services or to assist in performing these services under certain conditions. AMs and FOMs will monitor the conditions and report any changes to CP to ensure that the integrity of the official system is not compromised.

Although the AMA and implementing regulations do not have similar provisions regarding exceptions, the procedures in this Directive also apply to personnel (other than FGIS Personnel) performing official processed and graded commodity services.

V.
PROCEDURES

A. Responsibilities of Agency Managers (AMs):

1. Ensure that all official personnel including directors and trustees of the agency, as applicable, understand the conflict-of-interest provisions of the USGSA, applicable regulations (including 68.30 and 68.80 under the AMA), directives, and instructions.
2. Require prospective employees and present employees, as applicable, to complete and sign a conflict-of-interest statement (non-licensed personnel, FGIS-100), (licensees, grain, FGIS-944), (licensees, commodities, CP-357). If the applicant or employee submits a conflict-of-interest form indicating that a possible conflict may exist, AMs shall obtain all pertinent information needed to evaluate the case. Some of the more common situations in which conflicts of interest exist are financial interest in grain cooperatives and the employment of members of the same household by the same grain firm. For example, if the situation involves stock in a grain cooperative, the AMs shall obtain such information as: the number of shares owned; the dollar value of the shares; the minimum patronage required to do business with the grain cooperative; whether the licensee will perform official duties at the location; and other related information. In cases where the spouse or other members of the household are employed in the same grain firm or cooperative, the AMs shall obtain such information as: the job title and specific duties of the individuals, such as supervisor,

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manager, millwright, laborer, etc.; the area of employment in the grain firm or cooperative; and related information. This information should be forwarded to FOMs along with their comments and recommendations. Follow the same procedures for all potential conflicts.

3. If exceptions are granted, ensure that employees comply with all conditions and notify the FOM of any change.

4. Include in internal program reviews all potential conflict situations and notify FOMs of any new cases identified or of significant changes.

5. Remind agency personnel of the standards of conduct they are required to meet in the performance of official services to avoid the appearance of a loss of impartiality or independence, and to not engage in activities that could adversely affect the confidence of the public.

B. Responsibilities of Field Office Managers:

1. Ensure that agency managers and field office employees understand the conflict-of-interest provisions of the USGSA, applicable regulations (including 68.30 and 68.80 under the AMA), directives, and instructions.

2. Ensure that the conflict-of-interest forms are properly filled out and include all pertinent information. Obtain additional clarifying information if needed.

3. If a conflict, or the appearance thereof, exists, send the form along with clarifying information to the Regulatory Branch. If an exception is being requested, recommend approval or denial of the exception. If an exception is recommended, include suggested conditions.

4. If an exception is granted, monitor the conditions and notify CP of any change.

5. Include in management reviews a reassessment of all potential conflict situations including exceptions, and notify CP of significant changes.

6. Additionally, FOMs are responsible for ensuring the conflict free status of AMA licensees under contract with FGIS.

C. Responsibilities of Compliance Division:

1. If determined that a conflict exists, inform the FOMs that immediate action is required to eliminate the conflict unless an exception is requested.
2. Approve or disapprove requests for exceptions; determine the conditions of the exceptions to assure that the conflict will not compromise the integrity of the official inspection system. Consult with FOMs before requiring changes in the conditions recommended by them.
3. If approved, send results of decision with conditions, if applicable, to the FOMs and AMs with instructions to discuss with and obtain the person's signature indicating an understanding of and consent to the conditions.
4. If not approved, apprise the FOMs and the AMs of the reasons for the decision and the consequences for not eliminating the conflict.
5. CP reviews will evaluate the F/O's compliance with these procedures for handling conflict-of-interest cases.
6. Maintain records of all conflict-of-interest cases.



Acting Administrator